

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY EARL CLIMMONS, E57421,

Petitioner,

v.

JAMES ROBERTSON, Warden,

Respondent.

Case No. [18-cv-01638-CRB](#) (PR)

**ORDER DISMISSING PETITION
FOR A WRIT OF HABEAS
CORPUS FOR FAILURE TO
EXHAUST**

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), seeks a writ of habeas corpus under 28 U.S.C. § 2254 invalidating the California Board of Parole Hearings' (BPH) July 2, 2015 decision to deny him parole. He also seeks leave to proceed in forma pauperis, which, based solely on his affidavit of poverty in his prior habeas petition, is GRANTED.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995) (Supreme Court of California must be given at least one opportunity to review state prisoners' federal claims). The petition for a writ of habeas corpus therefore is

1 DISMISSED without prejudice to petitioner filing a new petition after state judicial remedies are
2 exhausted.

3 The clerk is instructed to close the file.

4 **IT IS SO ORDERED.**

5 Dated: March 26, 2018

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7 CHARLES R. BREYER
8 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARRY CLIMMONS,
Plaintiff,

v.

MICHAEL MARTEL,
Defendant.

Case No. 3:18-cv-01638-CRB

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 26, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Larry Climmons ID: CDC E57421
Pelican Bay State Prison
PO Box 7500
Crescent City, CA 95532

Dated: March 26, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER